IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

WP(C).No. 11476 of 2007(N)

PETITIONER:
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1. C.D.DEVASSY,INCHAKAL,NEDUNGAPRA,
PERUMBAVOOR.

2. C.P.MICHAEL,ARANYAVAS,EZHUPUNNA,SOUTH
P.O,SHERTALLAI.

3. K.G.BHASKARAN,IYVARKALA,QUILON.

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENTS:
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1. THE REGISTRAR OF CO-OPERATIVE SOCIETIES
TRIVANDRUM.

2. STATE OF KERALA REPRESENTED BY THE
SECRETARY TO GOVERNMENT,CO-OPERATION DEPARTMENT,
TRIVANDRUM.

3. THE KERALA STATE CO-OPERATIVE HOUSING
FEDERATION LTD NO.4330,KALOOR,KOCHI REPRESENTED
BY ITS MANAGING DIRECTOR.

R1&2 BY SR. G.P. SRI.P.N.SANTHOSH
R3 BY ADV. SRI.A.K.CHINNAN
SMT.SUSAL A. CHINNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/04/2007, ALONG WITH WPC NO. 12716 OF 2007 & WPC NO. 12032 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) Nos.11476, 12032 & 12716 of 2007

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Dated this the 13th day of April, 2007.

JUDGMENT

Heard counsel appearing for the petitioners in the connected cases and the Government Pleader. Challenge is against Ext.P4 issued by the Registrar of Co-operative Societies prohibiting periodical rescheduling of house building loans given by Primary Societies after 31.3.2007 to escape from default under Rule 46(e) of the Kerala Co-operative Societies Rules. Petitioners' case is that from 2003 onwards based on Government Orders, the apex society i.e. Kerala State Co-operative Housing Federation Ltd., permitted the Primary Societies to reschedule loans given to members. Rescheduling was done every year and it is the case of the petitioners that they should be allowed to do it hereafter also. According to them, the apex society permitted rescheduling this year also. Government Pleader on the other hand contended that the periodical rescheduling is only for the purpose of neutralising statutory provision by which defaulting society loses membership in the board of apex society. I am in agreement with the argument of the Government Pleader for more than one reason. In the first place, loans advanced by the Primary Societies are house building loans

which are for long term duration. Terms of the loan are arranged based on repaying capacity of the loanees and repayments are on instalment basis. Therefore, unlike other loans a routine policy of rescheduling of house building loans should not be adopted. In fact it is not known whether the same loan is rescheduled more than once. Obviously, the petitioners appear to be escaping liability from default by periodic rescheduling of loans. All what Ext.P4 seeks to achieve is to put an end to licence for perpetual default by giving right for rescheduling of loans. However, I feel the immediate consequence of Ext.P4 should not follow in the form of loss of representation of Primary Societies in the managing committee of apex society. Since I find no ground to interfere with Ext.P4, it is upheld. However, there will be direction to the respondents not to disqualify any member-society to send delegate to the apex society's board for a period of three months for each society to give statement of recoveries made and reduction in default during such period. In fact if any society is able to recover substantial amounts and show trend of recovery in three months, there will be direction to the Government to grant another three months time, to escape from default. However, if any society continues to be in default after the above period, Rule 46(e) can be applied to disqualify such society.

2. I do not find any justification for the apex society to give standing licence for rescheduling of house building loans by primary societies to members. In fact rescheduling should not be done as a matter of policy, but should be considered on a case to case basis and it should be left to the managing committee of every primary society to consider. Therefore, there will be direction to the third respondent not to give blanket licence for rescheduling of loans by primary societies without guidelines. I make it clear that even though Ext.P4 is upheld, it would be open to the management of any primary society to consider individual cases of loan and grant reasonable incentives for early recovery or for rescheduling of loans without society becoming a defaulter to the Apex society. In view of the above directions, all previous Circulars pertaining to recovery will stand cancelled and primary societies are free to proceed for recovery in terms of loan agreements.

These W.Ps. are disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

pms